

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Acumen Communications

Licensee of Station WQJF635,
Los Angeles, CA)
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File No.: EB-FIELDWR-13-00006185

NAL/Acct. No.: 201432900001

FRN: 0016049017

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: December 11, 2013**Released: December 11, 2013**

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Acumen Communications (Acumen), licensee of Station WQJF635 in Los Angeles, California, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ and Sections 1.903(a) and 90.403(e) of the Commission's rules (Rules),² by operating Station WQJF635 on a frequency not authorized on its license, and by failing to take reasonable precautions to avoid causing harmful interference. We conclude that Acumen is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000). In addition, we direct Acumen to submit, no later than thirty (30) calendar days from the date of this NAL, a statement, signed under penalty of perjury, confirming compliance with the Act, the Rules, and its license.

II. BACKGROUND

2. On January 17, 2013, in response to a complaint from the United States Coast Guard (USCG) concerning interference to their operations in the Los Angeles, California area in the 150 MHz VHF band, an agent from the Enforcement Bureau's Los Angeles Office (Los Angeles Office), using radio direction-finding methods, determined that the continuous signal that was causing interference to the USCG was coming from the Mount Wilson communications site in Los Angeles, California. The next day, Los Angeles agents further determined that the specific source of the ongoing interference was coming from the Acumen Communications building located at 123 CBS Lane on Mount Wilson. Specifically, the agents located the interfering signal, transmitting on 150.6973 MHz, to the Acumen transmitter and equipment rack, which was labeled as frequency 151.580 MHz.

3. After being contacted by phone by Los Angeles Office management, Acumen personnel contacted the Los Angeles agents at the Acumen transmitter site. The agents explained to the Acumen personnel their findings regarding the source of the interference to USCG communications. The Acumen personnel then turned off the offending transmitter remotely and the interference to the USCG ceased. When queried by the agents, Acumen stated that the radio station in question was operating pursuant to the Station WQJF635 authorization. According to the Station WQJF635 authorization in effect at the time of the investigation, the only VHF frequencies it was authorized to operate on, from any location,

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a), 90.403(e).

were VHF frequencies 152.285 MHz and 157.545 MHz; the authorization did not include operation on frequency 151.580 MHz.³

4. On January 30, 2013, the Los Angeles Office issued Acumen a Notice of Violation (NOV) for failing to operate Station WQJF635 in accordance with its authorization, and for failing to take reasonable precautions to avoid causing interference to licensed services, by operating Station WQJF635 on frequency 151.580 MHz and generating a spurious emission on frequency 150.6973 MHz.⁴ In its NOV Response, Acumen did not deny that the Station was generating the spurious signal on 150.6973, but stated that the transmitter was operating “on frequency 152.285 [MHz] and . . . that the transmitter was transmitting a spurious signal about .8 [MHz] both sides of the designated [frequency] across the band and . . . [it was] moving all over. (Completely unstable).”⁵

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹¹

³ See Station WQJF635 Authorization, effective May 4, 2012.

⁴ See *Acumen Communications*, Notice of Violation, V201332900008 (Jan. 30, 2013).

⁵ See Response to Notice of Violation of Acumen Communications at 1 (Mar. 6, 2013) (on file in EB-FIELDWR-13-00006185) (NOV Response).

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

⁹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

A. Operation on Unauthorized Frequency

6. The evidence in this case is sufficient to establish that Acumen violated Section 301 of the Act and Section 1.903(a) of the Rules. Section 301 of the Act prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by radio, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹² Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission.¹³ On January 17 and 18, 2013, Los Angeles agents observed that Acumen was operating radio equipment that was transmitting a continuous signal that was creating a spurious emission, causing interference to USCG communications. Although Acumen states in its NOV Response that the malfunctioning transmitter was operating on its assigned frequency (i.e., 152.285 MHz),¹⁴ the direct evidence obtained during the investigation by the Los Angeles agents (which included screen captures of spectrum analyzer measurements and frequency labels on the equipment) shows otherwise. Specifically, the agents confirmed that the fundamental frequency in use was frequency 151.580 MHz, a frequency not authorized by the Station WQJF635 license; and that a spurious signal causing interference to USCG operations in the 150 MHz band was observed on frequency 150.6973 MHz, a frequency approximately 0.8 MHz below the center frequency of 151.580 MHz, which is within the range of the spurious signal. Indeed, in its NOV Response, Acumen did not dispute that it was the cause of the interfering spurious signal, and it also acknowledged that the spurious signal was approximately 0.8 MHz on both sides of the fundamental frequency.¹⁵ Based on the evidence before us, we find that Acumen apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating Station WQJF635 on a frequency not authorized by its license.

B. Failing to Take Reasonable Precautions to Avoid Interference

7. The evidence in this case is sufficient to establish that Acumen also violated Section 90.403(e) of the Rules. Section 90.403(e) of the Rules requires that “[l]icensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.”¹⁶ On January 17 and 18, 2013, Los Angeles Office agents observed that Acumen was operating radio equipment that was transmitting a continuous signal, creating a spurious emission, and causing harmful interference to USCG communications. In its NOV Response, Acumen did not dispute it was the cause of the interference and proffered no evidence that it was making any effort to monitor its operations or take any other reasonable precautions to avoid causing interference. The result of Acumen’s failures was constant interference to USCG communications. Based on the evidence before us, we find that Acumen apparently willfully and repeatedly violated Section 90.403(e) of the Rules by failing to take reasonable precautions to avoid causing harmful interference.¹⁷

¹² 47 U.S.C. § 301.

¹³ 47 C.F.R. § 1.903(a).

¹⁴ NOV Response at 1.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 90.403(e).

¹⁷ See, e.g., *Portland Taxicab Company*, Forfeiture Order, 19 FCC Rcd 22511 (Enf. Bur. 2004) (assessing a \$4,000 forfeiture to a land mobile licensee for operating on unauthorized frequencies in violation of Section 1.903(a) of the Rules; a \$7,000 forfeiture for transmitting spurious emissions resulting in harmful interference in violation of Section 90.403(e) of the Rules; and a \$1,000 forfeiture for failing to identify in violation of Section 90.425(a) of the Rules), *aff’d*, Memorandum Opinion and Order, 22 FCC Rcd 1059 (Enf. Bur. 2007).

C. Proposed Forfeiture and Reporting Requirement

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation on an unauthorized frequency, or unauthorized emissions, is \$4,000; and the base forfeiture amount for interference is \$7,000.¹⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁹ In doing so, we find that the violations here warrant a proposed forfeiture above the base amounts. As the record reflects, Acumen's unauthorized operation produced a spurious signal, which caused constant harmful interference to USCG communications; and which Acumen was unaware of until contacted by the Los Angeles Office. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Acumen is apparently liable for a total forfeiture in the amount of seventeen thousand dollars (\$17,000).

9. We further order Acumen to submit a written statement, pursuant to Section 1.16 of the Rules, signed under penalty of perjury by an officer or director of Acumen, stating that it is operating Station WQJF635 in compliance with Section 301 of the Act,²⁰ and with Sections 1.903(a) and 90.403(e) of the Rules.²¹ Acumen should also provide details of the specific actions it has taken to come into compliance. This statement must be provided to the Los Angeles Office at the address listed in paragraph 12, below, within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Acumen Communications is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violation of Section 301 of the Act, and Sections 1.903(a) and 90.403(e) of the Rules.²²

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Acumen Communications **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that Acumen Communications **SHALL SUBMIT** a written statement, as described in paragraph 9, above, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles District Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703. Acumen Communications shall also e-mail the written statement to WR-Response@fcc.gov.

¹⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ 47 U.S.C. § 301.

²¹ 47 C.F.R. § 1.903(a).

²² 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.903(a), 90.403(e).

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Acumen Communications shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703, and include the NAL/Acct. No. referenced in the caption. Acumen Communications also shall e-mail the written response to WR-Response@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 47 C.F.R. § 1.1914.

²⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Acumen Communications, at 10670 S. La Cienega Blvd., Suite C, Inglewood, CA 90304.

FEDERAL COMMUNICATIONS COMMISSION

Charles A. Cooper
District Director
Los Angeles Office
Western Region
Enforcement Bureau